

Tuesday, 16 July, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
CONFERENCE ROOM OF THE TRIBUNAL
Room 216
War Ministry Building
Tokyo, Japan
(9:00 A.M.)

THE UNITED STATES OF AMERICA, et al.,

- against -

ARAKI, Sadao, et al.

PROCEEDINGS IN CONFERENCE ROOM

ON

No. 264. Application under Rule 6(b)(1)
of the Rules of Procedure of the International
Military Tribunal for the Far East.

No. 253. Application for Permission to
File and Serve Excerpts instead of entire
documents.

No. 246. Application under Rule 6(b)(1)
of the Rules of Procedure of the International
Military Tribunal for the Far East.

No. 286. Application of all remaining
defendants for leave to file the attached
application for an order requiring the prose-
cution to furnish to each defendant a true copy
of all interrogations and statements obtained
from such defendant.

No. 284. Request for Production of Witnesses.

No. 292. Application for Leave to File the
Within Application dated the 15th day of July,
1946.

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No. 291. Application for Leave to File the Within Application dated the 15th day of July, 1946.

Before:

HON. SIR WILLIAM WEBB, President
of the Tribunal and Member from
the Commonwealth of Australia.

Appearances:

For the Prosecution Section:

EUGENE D. WILLIAMS

For the Defense Section:

USAMI, Rokuro
MAJOR BEN BRUCE BLAKENEY
GEORGE A. FURNESS
LAWRENCE P. McMANUS
KIYOSE, Ichiro
OWEN CUNNINGHAM
WILLIAM LOGAN, JR.
GEORGE C. WILLIAMS

For the Office of the General Secretary, IMTFC:

G. WALTER BOWMAN, Clerk of the Court

Reported by:
Julian Wolf.

THE PRESIDENT: Are all the defendants represented now?

MR. LOGAN: Yes.

THE PRESIDENT: The first application is one by the prosecution. It is under Rule 6(b)(1), and it is in respect of the minutes of the League of Nations Advisory Commission on Trafficking in Opium, and on other minutes of the League of Nations; and also in respect of a publication entitled, "The Collection of Laws promulgated by the North China Political Council."

I suppose the arguments you offer, Mr. Williams, are the same as that offered on previous applications--

MR. WILLIAMS: Yes, that is true.

THE PRESIDENT: -- of a similar trial? Are there any special features of this that you would like to refer to?

MR. WILLIAMS: No.

THE PRESIDENT: I would like to hear the defense on this.

MR. LOGAN: If the Court please, we have not received these documents that the prosecution refers to: 9557, 9558, 9559 and 16680; so we have really no means of knowing just what really is being attempted by the prosecution here, and in addition, the prosecution states that the only parts that they are offering are the only

parts of these documents which are material and relevant to the issues. Well, we do not know whether that is so or not. There may be other parts of these documents which are material and relevant to the issues, and the mere fact that the prosecution says so does not make it true necessarily. We should be given the opportunity to check those documents and see if there are other parts relevant and material.

THE PRESIDENT: I think I should take the view that until you show otherwise, that the order is material.

MR. LOGAN: No, I am not saying that the parts that they are offering are immaterial. What I am saying is that there may be other parts of the document which are material and which should be furnished us in accordance with the rules.

THE PRESIDENT: If we discover that, we will no doubt direct that you be supplied copies of those parts, translated.

We intend to see that the defense gets all that they are entitled to, but, at the sametime, avoid delays in the production of the documents. When are you going to use this material, Mr. Williams?

MR. WILLIAMS: That is going to be coming up in the latter part of the next phase of the case to be presented.

THE PRESIDENT: Do you expect to present that as

soon as you begin tomorrow?

MR. WILLIAMS: Well, Mr. Darsey has about a day and a half more of his section.

THE PRESIDENT: You also have the Chinese witnesses.

MR. WILLIAMS: Yes. We will question these witnesses first; then following that and within the next week or so, this other matter will be presented. My understanding of the ruling of the Court, which has been very fair to the defense, was that when we did produce only excerpts from these documents, that we file in the Secretariat the entire document, so the defense had an opportunity to see what was there. If they found other parts they considered to be material they could have them produced.

THE PRESIDENT: They could come here for an order, or else you could consent.

MR. LOGAN: Certainly.

THE PRESIDENT: I think that would protect the defense.

The next matter, I think, has been before the Court before.

MR. LOGAN: May I ask this, your Honor, before passing on this: Does the prosecution have one extra copy of each of these documents?

MR. WILLIAMS: I cannot say as to those particular documents, but in most instances we do not. That is the reason we make provision about having them placed

with the Secretariat, where either side can get them. In many cases we have only one copy; in other cases we have two copies, but, and as to these particular ones-- I cannot state whether we have one copy or more than one.

MR. LOGAN: If the prosecution has an extra copy of that, the defense would like to have them, if we may-- one that is filed with the Secretariat. That would be of great help to us.

MR. FURNESS: In many cases they must have a few extra copies.

THE PRESIDENT: It is the wish of the Tribunal that, if those copies are available, they should be given to the defense.

MR. WILLIAMS: We will try to work that out.

MR. FURNESS: They have not got enough to give all of us copies, we know that, or else we would not make these motions.

THE PRESIDENT: The next matter is an application by prosecution for permission to file and serve excerpts instead of entire documents, in respect of 21 documents, including interrogations of the accused.

CLERK OF THE COURT: I think that was the one they were going to get together on. It came up once before.

THE PRESIDENT: Yes, this is a further consideration and I suppose that the parties have not been able to agree

on this.

MR. FURNESS: No, sir.

THE PRESIDENT: Not able to agree?

MR. FURNESS: Not now.

THE PRESIDENT: Well, I would like them to meet.

MR. CUNNINGHAM: I had a talk last night with Mr. Parkinson about it, and I thought that he had a suggestion that they should make a certificate and add to the documents -- which are separate and complete documents-- parts of books, and then submit to us the information on those, so that we could eliminate all of those which did not require to be considered under this rule, but he has not made any move, and we did not make any move, because we expected him to take the initiative in the matter; but there is a little misunderstanding about it.

THE PRESIDENT: It is a pity that these things should be delayed on account of some trifling misunderstanding.

MR. WILLIAMS: If the defense counsel will designate one person, or a small committee to consult with Mr. Parkinson about this, I will see that Mr. Parkinson consults with him at the time it is fixed. There is no reason to take up the Court's time with matters we can agree upon.

MR. LOGAN: I suggest we adjourn it for the time being.

THE PRESIDENT: I think we would have a very futile

discussion today. If we went through these items one by one, which I propose to do now, it would be much more helpful. I again ask the parties to confer, perhaps with some prospects of success.

MR. WILLIAMS: I think if the defense were small enough, we might be able to agree.

THE PRESIDENT: The next application is also by the prosecution. It is under Rule 6(b)(1), and in respect of certain reports and affidavits in connection with the treatment of prisoners of war. This also has been before the Tribunal -- before the Tribunal in Court and in Chambers. It has been considered by the Tribunal and I better not deal with it.

MR. WILLIAMS: Mr. Justice Webb, may I make one suggestion? In further considering that application, which deals with the subject under the control of Justice Mansfield, we have started already, because we did not feel justified in delaying the matter of processing in full the English of these affidavits, and attaching the translation of those portions to which we refer, which is in accordance with the rules, and therefore, I do not think it is going to be necessary for us to present that particular motion, because of the fact that there was some delay in having a hearing on it. We decided that was probably safer, and to go ahead with the processing. So the processing

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has been started on that basis, and it will be in conformity with the rule; so I do not think there is any necessity for exception.

MR. LOGAN: Is the motion withdrawn?

MR. WILLIAMS: I think we are safe in withdrawing that motion under certain circumstances.

MR. CUNNINGHAM: We may have an understanding on when the addresses and other information provided by the Court shall be provided us.

THE PRESIDENT(to Mr. Williams): You withdraw that with the consent of the Tribunal.

MR. WILLIAMS: Naturally, we would have to have the consent of the Tribunal.

MR. FURNESS: I think the rule requires a full translation.

MR. WILLIAMS: The rule requires a translation only of the portions we offer in evidence. I am very definitely sure of that.

THE PRESIDENT: You are withdrawing this application with the permission of the Tribunal. Well, I give that permission.

CLERK OF THE COURT: That is No. 246, is it not, Sir William?

THE PRESIDENT: Yes.

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THE PRESIDENT: Yes.

The next matter is an application by all the

defendants, apparently for an order requiring the prosecution to furnish to each defendant the true copy of all interrogations and statements obtained from such defendant. What is the position at the present? Do you supply copies of the interrogations you propose to use, Mr. Williams?

MR. WILLIAMS: My understanding is that there is only one. Such a question has arisen so far, and in that particular case the interrogations were filed with the Secretariat, and we provided copies only of the portions that we intended to use.

THE PRESIDENT: I did request that you provide copies of the whole of the interrogations. If you intend to use part of an interrogation, that you provide the defense with a copy of the whole of that interrogation.

MR. WILLIAMS: The question is whether we provide a copy to a particular defendant, or whether we provide a copy for the Secretariat -- file a copy with the Secretariat -- which will be available for all the defendants to examine. That was the only question, as I understood it.

THE PRESIDENT: No. I thought you should give each defendant a copy of any -- of the whole of any interrogation, part of which you intended to use against him. That is what I expected it to be.

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MR. WILLIAMS: That involves giving only one copy. The question is, giving a copy to that particular defendant -- the counsel for that particular defendant -- or whether we will file a copy with the Secretariat, and whether it will be available for all defendants to examine.

MR. FURNESS: In reply to my question in court, you said you were offering the interrogations against all the defendants.

MR. WILLIAMS: I understood that was KIDO's diary, was it not?

MR. FURNESS: No, it was also the ARAKI interrogation.

THE PRESIDENT: I think that whether you do it through the Secretariat, or directly through the defendant concerned, he should have a full copy of the whole interrogation which you intend to use part of only.

MR. FURNESS: It is our understanding now that you are offering these interrogations only against the persons interrogated.

MR. WILLIAMS: My understanding is that they have been offered generally. My own particular view about the law is that they are admissible only against the defendant, because they are statements made after the termination of the conspiracy and outside of the presence of the other accused, and consequently, are admissible

only against the person making the admission.

THE PRESIDENT: That would be so.

MR. WILLIAMS: For that reason I do not see any reason to make any claim that they are admissible against anybody except that particular defendant.

THE PRESIDENT: I must remind myself that we are not bound by any rules of evidence.

I better give you a direction on that, Mr. Williams: that you provide the whole interrogation to the particular defendant.

MR. LOGAN: What about the question of time on that?

MR. WILLIAMS: Twenty-four hours before we offer them in evidence.

MR. CUNNINGHAM: As soon as possible, or sooner.

THE PRESIDENT: I suppose some of them are lengthy.

MR. WILLIAMS: Yes, and 99.44 per cent are immaterial and irrelevant.

MR. LOGAN: It may very well be that the prosecution has extra copies at the present time. Why could we not have those that they have right away?

THE PRESIDENT: Well, I may qualify it. I do not, for the time being, intend by saying that the prosecution should let you see the copies, and then provide you with so much of them as you think fit to demand. You may

yourself decide that. A lot of it is unimportant.

MR. WILLIAMS: As a matter of fact, Mr. President, we already have available one copy each of these interrogations, so that we could provide the attorney with it. We had anticipated that the Court would probably want us to file them at the Secretariat instead of with the attorney for the defendant, but it makes no difference to us who gets them. The only point is that when we start passing these things around, in exception to rules of distribution, we find ourselves getting into all sorts of mixups. We have certain rules of evidence.

MR. LOGAN: Does that mean that each defendant will be permitted to withdraw his copy from the Secretariat's office? It would be more convenient if the defendant's counsel got a copy rather than the Secretariat -- I mean if it is deposited with the Secretariat's office, and we would be permitted to withdraw it from there, that would serve the purpose.

THE PRESIDENT: That seems to be unobjectionable, Mr. Williams.

MR. WILLIAMS: Absolutely. If it is handled that way, it would not get mixed up with our regular distribution.

MR. LOGAN: We understand that would be done as quickly as possible.

MR. WILLIAMS: Within the next few days.

MR. McMANUS: Three additional statements that I need -- and I suppose I can ask Mr. Hyder for those -- concerning the confessions of ARAKI.

THE PRESIDENT: I recollect that. I think we had better treat the three as one. I order you to get them, although he is not using the other two. I have been thinking over that, and I thought that after all you should get only the interrogations used against him. I am not so sure now; I think probably you should get them, because they are all parts of the same thing -- to be put on bits of paper really -- one long interrogation.

MR. LOGAN: Along the same line, Mr. President, I know KIDO gave a statement with respect to certain things in addition to answering interrogations of the prosecution. I suppose that would fall under the same category as ARAKI.

THE PRESIDENT: Yes. No matter how many interrogations there may appear to be, we will treat them as one, because after all they are only one long transaction. We do not make any point of regarding them as a single interrogation. In court I did not make that clear. I make it clear now. I did not quite grasp the significance of it.

The next matter is for the production of witnesses by UMEZU, Yoshijiro. He is asking that Lieutenant General HATA be subpoenaed. I thought I ordered that.

MAJOR BLAKENEY: Yes, sir. HATA is only one of five men.

THE PRESIDENT: Is he only one of five?

MAJOR BLAKENEY: Yes, and of course HATA was ordered produced on the request of another defendant; so we should use him for a different purpose. I have included him here, for should the other defendant go out of the case by death or otherwise, I do not know whether I have the right to insist on the plans for the order already made.

THE PRESIDENT: Are you opposing this, Mr. Williams?

MR. WILLIAMS: No.

THE PRESIDENT: According to Nuremberg, the Court there considers whether a witness ought to be called. It seems to exercise a kind of discretion, which is ordinarily left to the defense or the prosecution. We may be obliged to do it here; I do not know.

MAJOR BLAKENEY: I might point out, sir, that in these instances we do not actually know, fully enough, what the witnesses will testify. These witnesses happen to be in Manchuria, and I cannot get them out of Manchuria. We labor under great difficulties, unless we can call these people freely for consultation.

THE PRESIDENT: The application will be granted.

CLERK OF THE COURT: There are two other applications

that were filed by the prosecution.

THE PRESIDENT: I suppose the defense has not seen those yet.

MR. WILLIAMS: There was one motion, and if it were convenient, it would please me to have it brought out now. That was the rather general motion that was submitted, I think yesterday, asking that we be given permission from time to time -- for a limited period of time -- to withdraw from the Secretariat certain documents which we have filed where we find that it is necessary for us to take additional excerpts from them. We can much more conveniently, and in a very short time, make other copies in our own office than we can by sending a stenographer down here and having them copy it in the Secretariat's office. In other words, it would be a nuisance to the Secretariat to have it done down there. We are asking, upon the application of Captain Salmons or Lieutenant Alexander, who are in charge of that work, that upon written receipt of that document it be turned over to them temporarily.

MR. LOGAN: On the basis of what Mr. Williams said, I do not see any objection to that.

THE PRESIDENT: No.

CLERK OF THE COURT: I think the attorneys should be cautioned about the exhibits. If they are lost, we

have lost part of our evidence in the case.

MR. WILLIAMS: Well, we are asking that the exhibit not be turned over to the attorneys, but to one of the two officers who have actual charge of the processing for that purpose only, so that copies of excerpts may quickly be made and returned. I think, if we can assure you that they will be treated with a great deal of care --

THE PRESIDENT: Will it be in the charge of public officials all the time? I think that is the main test.

CLERK OF THE COURT: (Addressing the President) That would be 292 there.

MR. LOGAN: Before going on to that, could we not have the same privilege extended to the defendants here, so that there would not be a necessity for that motion?

THE PRESIDENT: The paper will have to remain in custody. That will be in the case of the prosecution.

MR. LOGAN: Well, sir, you can trust that the defendants' attorneys here are all officers of the court.

CLERK OF THE COURT: We ought to narrow it down to two definite persons, because if other persons had custody, you would be running all over the country.

MR. LOGAN: How about Commander Harris; can we nominate him?

THE PRESIDENT: He was appointed by SCAP?

MR. LOGAN: Oh, yes.

MR. PRESIDENT: Some official, who could be held responsible.

MR. WILLIAMS: We are thoroughly in accord with the defense having the privilege of having Commander Harris get those documents, but may I suggest that I think it would be a matter of convenience if they did not avail themselves of that for a little while, until the prosecution's case has got further along. I assume that you are not going to be bearing documents for defense very soon. We would like to be completely through with them and not have any conflict as to who was using them.

MR. LOGAN: I think if there is any conflict, we would defer to the prosecution's case.

MR. WILLIAMS: When it comes to your part, we will defer to you.

THE PRESIDENT: What about No. 7? It is just down here as paper 291, and I do not know what it is about.

CLERK OF THE COURT: That was the application with regard to those movie films; to remove the exhibits No. 148 B to 148 M, and reduce those twelve reels of film. I imagine they are going to cut out parts and cut it down to four reels.

MR. WILLIAMS: The thought on that was simply this: It is a matter of no moment to the prosecution whatsoever.

That film is a Japanese-made -- we claim -- propaganda film. It consists of twelve reels. In accordance with what I am informed is the Japanese custom in these things, it is very draggy; it spends a lot of time on what we regard as nonessential elements in building up to the points that are of interest. It tired me to look at parts of it. I am sure it will tire everybody else to look at parts of it; and yet there are parts of it that are extremely interesting and extremely valuable as evidence, in our view. We were suggesting to the Court, by means of this motion, that if it was agreeable to the Court and agreeable to the defendants, we would cut out some of that draggy stuff inasmuch as we have already provided a full transcript of the entire speech that was made and a transcript of the written matter were what we considered to be a good translation. Our thought is that it is simply a matter of what the Court and counsel desire. We would just as soon look at it over again. Going to a movie is nothing unusual for a man from Southern California.

MR. McMANUS: If your Honor please, I think that the remarks that drag out parts of this film possibly show how ridiculous it is -- the parts that the prosecution feels are very important. I think it incumbent upon us to request that the whole film be shown, and if we

have air-conditioning in the court, another hour or two, I am sure, will not be too burdensome to the Court, to view the whole film, so that you can get the full gist of the film and see that it was not as bad as certain excerpts would infer it to be.

THE PRESIDENT: Yes, I think that we ought to see it again. The first part was shown under terribly poor conditions: there was too much light in the court to start with.

CLERK OF THE COURT: Perhaps, we ought to come back some evening and see it.

MR. WILLIAMS: I understand that a new and different projector has now been obtained, and the film is in condition to be shown. We would like to show it at an early date. Frankly, unless there is some way of shutting out the light in that courtroom, it may well be to everybody's advantage to have a night session on it. In other words, if we are going to see it at all, it might as well be seen under favorable conditions.

MR. BROOKS: Along that line, it is possible to mask that screen so that the light would not affect it at all. A full mask all around it would cut out those conflicting rays across it, and give a fair image. I do not know why they have not thought of it. In most places, where movies are shown, there is a mask on it.

We are not movie men, of course, and do not know too much about this sort of thing.

MR. WILLIAMS: They told us that was the type of screen they were going to prepare.

MR. FURNESS: One of the disturbing things is that half of the accused could not see it. From where they sit they could not see it at all; half the audience cannot see it; half the defense counsel cannot see it.

MR. CUNNINGHAM: Arrangements should be made so that the defendants should be able to review the film, if it is to be considered evidence against them. I talked to the Marshal of the Court and the Colonel who is in charge, and he suggested that it would have to be a direct order of the Court before he could change the seating of the defendants for that purpose, but I think only in fairness to the defendants, and for the purpose of the security of the record, that they ought to be able to review the film.

THE PRESIDENT: Well, the screen should be perhaps up in the gallery -- public gallery, and the machine up near the distinguished visitors.

MR. FURNESS: If it were reversed, the spectators could see it too, and only the distinguished visitors could not.

MR. LOGAN: I think that it originally was a theater,

and that is the way it was intended to go -- from the spectators down to the distinguished visitors. It might be arranged that way.

MR. WILLIAMS: I will state very frankly, your Honor, we discussed with the technicians this matter. We were not satisfied with the way it was finally arranged, but after considerable discussion we found out that no matter where it was put somebody was going to be shut off from seeing it.

MR. CUNNINGHAM: Of course, the defendants should see it if anybody sees it.

MR. WILLIAMS: I am more interested in having the Court see it than anybody else.

MR. CUNNINGHAM: Naturally.

THE PRESIDENT: I hope that will be satisfactorily arranged.

I think that is the whole of the business.

CLERK OF THE COURT: Are you denying that last application?

THE PRESIDENT: Yes, I think that is the effect of it.

(Whereupon, at 0925, the proceedings were adjourned.)

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